INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1970

No.

UNITED STATES OF AMERICA, APPELLANT

v.

ARMOUR & CO. AND GREYHOUND CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 15–21) is not reported.

JURISDICTION

The order of the district court, dismissing the government's petition to make Greyhound Corporation a party and to issue an injunction against it, was entered on June 30, 1970 (App. B, *infra*, p. 22). The notice of appeal was filed July 31, 1970 (App. C, *infra*, p. 23). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U.S.C. 29. *United States* v. *Armour & Co., and General Host*

Corporation, probable jurisdiction noted, 396 U.S. 811, judgment vacated and case remanded with instructions to dismiss as moot, 398 U.S. 268; *United States* v. *United Shoe Machinery Corp.,* 391 U.S. 24

QUESTIONS PRESENTED

The Meat Packers Consent Decree of 1920 (App. D, *infra,* pp. 24–42) prohibits Armour & Co. from dealing directly or indirectly in more than 100 specified products, mostly food products, including many customarily found in food service operations and restaurants. Greyhound Corporation, which through its divisions and subsidiaries is in the industrial food service and restaurant business, was not a party to this decree. The questions presented are:

1. Whether the acquisition by Greyhound of a controlling stock interest in Armour creates a relationship which interferes with Armour's adherence to the decree or otherwise violates the decree.

2. If so, whether the district court had the power to make Greyhound a party to the decree proceedings and order Greyhound to terminate that relationship.

STATUTES INVOLVED

Section 5 of the Sherman Act, 15 U.S.C. 5, provides:

> Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and

subpoenas to that end may be served in any district by the marshal thereof.

The All Writs Act, 28 U.S.C. 1651, provides in pertinent part:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

The general issues in this case are the same as in *United States* v. *Armour & Co. and General Host Corporation* (No. 103, 1969 Term), probable jurisdiction noted 396 U.S. 811, argued March 5, 1970, judgment vacated with instructions to dismiss as moot, 398 U.S. 268, following the transfer of control of Armour & Co. from the General Host Corporation to the Greyhound Corporation, the appellee here. Our brief filed in the *General Host* case (which we incorporate here by reference) fully describes the background of that case and this; we shall here simply summarize this background and then describe the proceedings in the district court relating to Greyhound that followed this Court's disposition of *General Host*.

The Meat Packers Consent Decree of 1920 enjoined for the indefinite future Armour and other large meat packers from "directly or indirectly * * * dealing in" some 114 specified food products and 30 other products. They were also perpetually enjoined from "owning, either directly or indirectly, * * * any capital stock or other interest whatsoever" in any firm deal-

ing in any of these products (App. D, *infra*, pp. 27–31, 36).

On January 20, 1969, the government filed a petition to make General Host Corporation a party to the decree and forbid it from acquiring control of Armour because General Host is engaged in food businesses forbidden to Armour (G.H. App. 47–49). On January 30, 1969, the district court denied the petition, ruling that while the decree prohibits Armour from holding any interest in a company handling any of the prohibited products, it does not prohibit such a company from taking over Armour (G.H. App. 172, 151).[1]

The Government appealed and this Court noted probable jurisdiction on October 13, 1969. The case was then briefed on the merits and oral argument was had on March 5, 1970.

Meanwhile, General Host had entered into an agreement to sell its controlling stock interest in Armour to Greyhound; because Greyhound was a regulated motor carrier, it needed Interstate Commerce Commission approval for the acquisition. The Department of Justice advised Greyhound and General Host on November 24, 1969, that—because Greyhound was also engaged in food businesses prohibited to Armour under the decree—it considered Greyhound's potential ownership of Armour just as inconsistent with the decree as General Host's ownership. The Department expressed this same position in a paper filed with the Interstate Commerce Commission and accordingly urged the Commission to de-

[1] G.H. App. refers to the Appendix in the *General Host* case.

fer action on Greyhound's application until this Court's decision. The Commission declined, however, to do so and granted the application on the afternoon of May 14, 1970 (*The Greyhound Corporation Securities*, Order dated May 14, 1970, served May 15, 1970, I.C.C. Fin. Dkt. No. 26056). The transfer of the stock to Greyhound was consummated early that same evening.[2] At the time of the consummation, the United States was about to apply to Mr. Justice Marshall, at his home, for a temporary injunction against such consummation. The government had previously informed General Host's counsel of its intention to seek such relief and had requested that the transaction be deferred for 24 hours to permit the filing and determination of the application; General Host's counsel forwarded the request to the parties in Chicago, where the closing took place, but they refused the postponement.[3]

General Host then moved to dismiss the case in this Court for mootness, pointing out that it no longer owned the Armour stock the government sought to have divested. The government opposed, urging that the transfer of the stock did not give the relief sought—which was divestiture consistent with the decree, not substitution of an equally objectionable owner. The Court, however, on June 1, 1970, vacated

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[2] As a result of the transfer, Greyhound, which already held a substantial minority interest in Armour, acquired approximately 86 percent of Armour's stock. Greyhound has announced its intention to acquire all of the remaining Armour stock.

[3] See our Memorandum in Opposition to Motion to Dismiss for Mootness, No. 103, 1969 Term, filed on May 22, 1970.

the judgment below and directed the district court to dismiss the petition against General Host as moot, Mr. Justice Douglas dissenting, 398 U.S. 268.

On June 18, 1970, the government filed a new petition in the district court, alleging (as it had against General Host) that Greyhound is engaged in businesses forbidden to Armour or any firm in which Armour has any direct or indirect interest, and that Greyhound's ownership of Armour therefore creates a corporate relationship forbidden by the Meat Packers Decree. The petition (like that in *General Host*) prayed that Greyhound be brought before the court under Section 5 of the Sherman Act and that an order supplemental to the decree be entered, enjoining Greyhound from acquiring any additional stock or acting to exercise control over or influence the business affairs of Armour, and requiring Greyhound to divest itself of the Armour stock.

The affidavit supporting the government's petition showed that Greyhound deals in food products through its divisions and wholly-owned subsidiaries, which provide industrial catering services and operate restaurants, cafeterias and other eating facilities in commercial plants, bus stations and elsewhere;[4] and that in 1969 Greyhound had revenues of about $124 million from food operations, which accounted for

[4] Among food items covered by the decree are bread, flour, sugar, fresh milk and cream, and many other food products customarily bought and sold in the catering service and restaurant business, subject to the exception that the meat packer defendants may deal in these products "in the operation of [the packers'] restaurants, laundries, or other conveniences, primarily for the benefit of their employees * * *" (App. D, *infra*, pp. 27–28)

over 16 percent of its total revenues of $688 million.[5] Greyhound filed no response to the government's petition, but it was represented by counsel at the hearing thereon (App. A, *infra.* p. 15).

The district court denied the petition against Greyhound for essentially the same reasons the same judge had given in denying relief against General Host. Ruling from the bench, the district judge stated that, since Greyhound itself is not a party to the original decree and is not charged with assisting or causing Armour to do any forbidden act, it is not "bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree" (App. A, *infra,* p. 18). In disposing of the government's contention that by acquiring Armour stock, Greyhound has placed Armour in a "corporate relationship" with a company that deals in prohibited food items, the court held that:

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[5] The uncontradicted affidavit stated:

"The Greyhound Corporation, through its divisions and wholly-owned subsidiaries, is engaged in the business of jobbing, selling, distributing, or otherwise dealing in products or commodities listed in the consent decree. Its subsidiary, Prophet Foods Company, is engaged in industrial catering. It operates eating facilities in industrial plants, schools, hospitals, nursing homes, and other commercial establishments. In 1968 it had sales in excess of $77 million. Through Post Houses, Inc., Greyhound operates restaurants in its bus stations and at rest and meal stop locations. Post Houses had sales in excess of $33 million in 1968. Greyhound's Miami Cafeterias, Inc., operates a small chain of cafeterias in Florida and Georgia, with sales of more than $3 million in 1968. In 1969 Greyhound's food operations had revenues of $123.8 million and accounted for over 16% of its total revenues."

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> the decree does not speak in terms of corporate relationships; it speaks in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree [*ibid.*].

A consent decree, the court ruled, has no "purpose" that can be "the basis for an extension of its terms to a situation not expressly covered thereby" (*id.* at 19). It therefore dismissed the petition for failure to state a claim upon which relief may be granted (*id.* at 21).

THE QUESTIONS ARE SUBSTANTIAL

This case is a continuation of the litigation over the interpretation of the Meat Packers Decree of 1920 which, while awaiting resolution in this Court last term, was interrupted by Greyhound's acquisition of General Host's interest in Armour. The substantive legal issue remains the same: whether Armour may be controlled by a firm substantially engaged in the general food business when Armour itself is forbidden to have any interest whatsoever in such firm. Armour's key position in the nation's food business as the second largest meat packer is underscored by the rapid changes in ownership it has recently undergone, reflecting the business community's appreciation of its great competitive potential. That same potential, in turn, underscores the continuing importance of the structural restraints imposed on Armour by the 1920

decree. Under those restraints, Greyhound's control of Armour is objectionable for the same reasons as was General Host's. The reasons for plenary consideration of this case are therefore the same as those that moved the Court to hear oral arguments last Term in the *General Host* case.

We do not repeat here the arguments we presented in detail in our *General Host* brief last Term, which show why the district court's dismissal of the government's petition against General Host—and therefore also the same disposition of the instant petition against Greyhound—was erroneous. Rather, we respectfully refer the Court to our argument there.[6] Our brief in *General Host* shows how the prophylactic structural separation decreed in 1920 between the economic power of the meatpacking defendants (*i.e.*, Armour) and the forbidden food lines is destroyed by any combination of them under single ownership, regardless of the form of the transaction that creates the combination and regardless of who initiates it; the same economic threat is present whether Armour itself engages in a prohibited business, acquires an interest in a firm in that business, consents to its own acquisition by such a firm, or is acquired by such a firm against its will by a successful tender or exchange

[6] Copies of the government's jurisdictional statement, its brief on the merits and the Appendix in *General Host* are being served on Greyhound, as well as a copy of the memorandum in Opposition to Motion to Dismiss for Mootness.

offer to its stockholders.[7] That brief also shows that a court of equity is not impotent to prevent such frustration of its decree, whether the basis of the decree is adjudication or the consent of the parties; Greyhound, like General Host before it, can be brought in as a party for the purpose of entering a supplemental order against it in aid of the decree.

As we explain in our *General Host* brief, our position is not that the decree should be read or modified to run against the world, to subject persons not named as parties to punishment for contempt. On the contrary, the government's petition requested the district court to bring Greyhound before it for a hearing and adjudication whether Greyhound's ownership of Armour interferes with or violates the decree; then and only then would the district court enter an order that would be binding on Greyhound *in personam*.[8] To

[7] Obviously a decree cannot meaningfully order a defendant not to allow itself to be taken over by a company in a forbidden business; thus there could be no logic to any suggestion that the absence of any express provision on takeovers means that the Meat Packers Decree was intended to allow them.

[8] In its Answer (pp. 8–9) to the government's Memorandum on Mootness in *General Host* (which included a request for injunctive relief against Greyhound) Greyhound apparently contended that it is not in any line of business forbidden under the decree. We find this hard to credit in view of the apparently undisputed facts. Any suggestion that restaurants do not "deal" in food within the meaning of the decree is disproved by the clear negative implication of the decree's exception for "restaurants * * * primarily for the benefit of [the meat packers'] employees" (p. 6, n. 4, *supra*).

say that the court could not remedy such a situation, is to treat a structural antitrust decree as nothing more than a means for preventing the particular wrongdoers originally brought before the court from repeating their misconduct, without any force to prevent third persons from recreating precisely the economic relationship that the decree was designed to eliminate.[9] Such a principle would seriously undermine the efficacy of the government's many structural antitrust decrees, whose very reason for existence is to prevent anticompetitive business relationships from coming into existence without the need for *de novo* proof of wrongdoing or harm.

For these reasons—as elaborated in our brief in *General Host*—the district court erred in dismissing the government's petition to require Greyhound to give up its interest in Armour, which at the time of the district court hearing amounted to 86 per cent of the stock, with an intention on Greyhound's part to increase it to 100 per cent ownership. If the decision below is allowed to stand, Greyhound will be in the

[9] For example, under the district court's ruling, any of the great supermarket chains could acquire complete control of any of the defendant packers, although the packers would be in contempt if they acquired any interest in a food chain. More concretely, although Swift & Co., one of the defendants, was required by the decree to divest itself of any interest in Libby, McNeil and Libby, a leading canner, Libby could—if the district court is right—presumably turn around and restore the relationship by acquiring control of Swift.

position of commanding Armour's vast competitive leverage as a huge meat packer side by side with its own substantial operations in the forbidden food lines, which produce $124 million in annual food revenues derived mostly from retail food operations. Thus, the wall that has been built and maintained over more than fifty years to separate the powerful meatpackers from companies in the general food business will have been breached by the devices of modern corporate expansion. We do not see how such a situation can realistically be squared with the continued existence of the Meat Packers Decree as a meaningful bulwark of competition in the food industry.

CONCLUSION

For the foregoing reasons, we submit that this case warrants plenary consideration by this Court; the judgment of the district court should be reversed and the case remanded with instructions directing that Greyhound Corporation be made a party and that the relief sought in the government's petition be granted.[10] In view of the fact that the issues raised here were fully briefed and argued last Term, the Court may deem it appropriate to dispose of this case on the basis

[10] Although Greyhound has not been made a party, it was represented at the hearing on the government's petition, where it made no effort to present its views to the district court. While we would not object to a further hearing on the question whether Greyhound's food operations are such that they would be forbidden to Armour under the decree—if Greyhound desires to dispute the government's affidavit (see p. 10, n. 8, *supra*)—we see no need for a further hearing otherwise.

of this jurisdictional statement (incorporating as it does the government's brief in the *General Host* case) and Greyhound's response hereto.

Respectfully submitted.

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SEPTEMBER 1970.

APPENDIX A

In the United States District Court, Northern District of Illinois, Eastern Division

No. 58 C 613

UNITED STATES OF AMERICA, PLAINTIFF

v.

SWIFT & COMPANY, ET AL., DEFENDANTS

Transcript of Proceedings had in the above-entitled cause before the Honorable JULIUS J. HOFFMAN, one of the judges of said court, sitting in his courtroom in the United States Courthouse at Chicago, Illinois, on Tuesday, June 30, 1970, at 10:00 o'clock a.m.

Present: Miss Edna Lingreen and Mr. Peter Goldberg, Washington Office, Anti-Trust Division, Department of Justice, on behalf of the government; Mr. Edward L. Foote, Mr. Edward J. Wendrow and Mr. Robert Bernard, General Counsel, on behalf of Greyhound Corporation.

* * * * *

The COURT. The government has filed a petition in order, in its own words, "to prevent and restrain interference with and obstruction of, and to remedy a situation inconsistent with, the decree entered by the Supreme Court of the District of Columbia on February 27, 1920 in Equity Cause No. 37623, which cause was transferred to this court by order dated January 15, 1958." The decree entered in 1920 was upon

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the consent of the parties to a civil antitrust action under the Sherman Act, 15 U.S.C. paragraphs 1, 4— the government and 135 defendants. The defendants were the so-called "big five" meat-packing companies, one of which was Armour and Company, plus 80 corporate subsidiaries and 50 of their officers and directors. The decree is summarized in United States v. Swift & Co., 189 F. Supp. 885 (N.D. Ill., 1960). Put simply, the defendants were enjoined from dealing in meat at retail and from any dealing wholesale or retail, in enumerated "unrelated lines" of commerce: 114 non-meat food products and thirty other items.

The petition which the government has now filed seeks to enjoin interference with the 1920 Swift decree by the Greyhound Corporation. It is alleged in the government's petition that Greyhound has acquired 86 percent of the outstanding common stock of Armour and Co., and that it has announced an intention to acquire the remaining outstanding stock. It is further alleged that Greyhound, through its divisions and wholly-owned subsidiaries, does substantial business in products or commodities within the scope of the 1920 Swift decree. Based on these alleged facts, the government contends that Greyhound is in a position to control Armour, and that such control "is inconsistent with, obstructs, and interferes with the decree . . . by putting Armour in a corporate relationship with a company which deals in food items prohibited to Armour by the decree." This proposition is supported by the government's addtional claim that such a corporate relationship "places Armour in the position of indirectly engaging in or carrying on" the businesses of the Greyhound divisions and subsidiaries. The specific relief sought by the government is (1) an order restraining Greyhound from acquiring any additional Armour stock and from taking any

action to exercise control over or to influence the business affairs of Armour, and (2) an order that Greyhound divest itself of all of its Armour stock.

It is important to bear in mind what the government is not seeking. The government is not seeking to enjoin Greyhound from committing any violation of the antitrust laws. There is no charge that Greyhound has or has threatened to conspire to restrain trade, to monopolize any market, or to commit any other offense against the antitrust laws. Nor is the government seeking to prevent a violation of the 1920 consent decree by Armour, or by any of the defendants that were parties thereto. The government charges no violation of the decree by Armour, and it seeks no injunction against Armour. Thus, the entire substance of the government's petition here is the alleged interference with the 1920 decree by a nonparty, Greyhound.

The consent decree entered in 1920 was in the nature of a permanent injunction. Rule 65(d) of the Federal Rules of Civil Procedure provides that "Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order . . ." This rule states what has long been accepted, that an injunction binds only those who are parties to the action. As Judge Learned Hand said in Alemite Manufacturing Corp. v. Staff, 42 F. 2d 833 (2d Cir. 1930):

> . . . no court can make a decree which will bind anyone but a party; a court of equity . . . cannot lawfully enjoin the world at large . . .

Thus, an antitrust consent decree cannot bind one who was not a party to the action. United States v. Carter Products, Inc., 211 F. Supp. 144 (S.D. N.Y. 1962).

Of course, this is not to say that it is impossible for a non-party to violate an injunction. Defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors who were not parties to the original action. Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9 (1945). A non-party can violate a decree not by committing acts itself that are prohibited by the decree, but only by helping to bring about an act of a party which is prohibited by the decree. Alemite Mfg. Corp. v. Staff, 42 F. 2d at 833. Accord, United Pharmacal Corp. v. United States, 306 F. 2d 515 (1st Cir. 1962); Kean v. Hurley, 179 F. 2d 888 (8th Cir. 1950).

From the foregoing it is clear that Greyhound may not lawfully assist any party, such as Armour, in committing acts prohibited by the 1920 consent decree. But it also follows that Greyhound, which was not a party to the 1920 action, and which at that time had no interest in any of the parties, is not itself bound in any way by the decree and may not be enjoined from committing any acts on the ground that they are prohibited by the decree. It is the latter that the government now seeks to do. The government has not charged that Greyhound has or threatens to cause or assist Armour, or any of the original defendants, in dealing in any of the lines of commerce prohibited to them by the decree. The government's petition states that by acquiring Armour stock, Greyhound has placed Armour in a "corporate relationship" with a company that deals in prohibited food items. But the decree does not speak in terms of corporate relationships; it speaks in terms of the defendants dealing in the specified lines of commerce, and to make out a violation the government must charge such dealing by a party to the decree.

It is well accepted that consent decrees are to be strictly construed. As the court said in American Ra-

dium Co. v. Hipp. Didisheim Co., 279 F. 601, 603 (S.D. N.Y. 1921):

> Consent decrees, as their name implies, are the result of an agreement, . . . They are to be read within their four corners, and especially so because they represent the agreement of the parties, and not the independent examination of the subject-matter by the court. They are binding only to the extent to which they go. Neither court nor party can write in them what is not there . . .

This holding has been cited with approval in Dart Drug Corp. v. Schering Corp., 320 F. 2d 745, 749 (D.C. Cir. 1963); and Star Bedding Co. v. The Englander Co., 239 F. 2d 537, 542 (8th Cir. 1957). And as the court said in Artvale Inc. v. Rugby Fabrics Corp., 303 F. 2d 283, 284 (2d Cir. 1962): "A consent decree represents an agreement by the parties which the court cannot expand or contract. Butler v. Denton, (150 F. 2d 687 (10th Cir. 1945))." The government argues that the corporate relationship created by Greyhound's acquisition of Armour is "inconsistent" with the purposes of the decree, even if a violation of the letter of the decree cannot be shown. The so-called "purpose" of a consent decree cannot be the basis for an extension of its terms to a situation not expressly covered thereby. In the first instance, such a procedure would contradict the rule of strict construction of consent decrees. In addition, a "purpose" approach is wholly inappropriate because it is the parties who have purposes: the government to secure some relief while conserving resources; the defendants to save money and time, avoid the prima facie evidence rule in private actions, and limit the risk of a more stringent remedy.

It is impossible to see how a general scheme can be surmised from provisions which represent a com-

promise of the parties with respect to the most crucial matters in an antitrust proceeding. And, as it has been observed, nowhere is such a compromise more evident than in the initial decree entered in this case. See Note, "Flexibility and Finality in Antitrust Consent Decrees," 80 Harv. L. Rev. 1303, 1315 (1967). If the situation created by Greyhounds acquisition of Armour stock is inconsistent with whatever "purposes" the government believes attach to the 1920 decree, there is still no showing of a violation, or of the kind of "interference" that will warrant an injunction against a non-party. Of course, if the situation thus created is inconsistent with the antitrust laws, the government may bring an independent action against Greyhound. But that is not what we have here.

Finally, the only case cited by the government in support of its petition to summon Greyhound is wholly inapposite to the situation here. United States v. Bayer Co., 105 F. Supp. 955 135 F. Supp. 65 (S.D. N.Y. 1952, 1955) involved the summoning in a supplementary action a company that sought to compel enforcement of contracts that had been held violative of the antitrust laws and the performance of which had been enjoined in an earlier action. The summoned party was a party in interest to the original unlawful contracts, and was directly seeking to compel the original defendants to perform the prohibited agreements. Thus the summoned party was made an additional party to the original proceeding and was made subject to the terms of the original injunction. The situation here is entirely dissimilar. Greyhound had no interest in any way in any of the defendants or their operations when the decree was entered in 1920. And the government has not alleged that Grey-

hound has, or is about to, take any action in order to cause Armour to violate the 1920 decree.

Having considered the government's petition and the supporting memoranda, I have concluded that the petition should be dismissed for failure to state a claim upon which relief may be granted.

Mr. Clerk, the petition of the United States of America to summon the Greyhound Corporation and for an injunction will be dismissed.

APPENDIX B

United States District Court, Northern District of Illinois, Eastern Division

Name of Presiding Judge, Honorable JULIUS J. HOFFMAN.

Date 6–30–70.

Cause No. 58C613.

Title of Cause: U.S.A. vs. Swift & Co., et al.

Brief Statement of Motion: Hrg. on Petn. of Govt. for an injunction and other relief, against Greyhound Corp.

* * * * *

Petition of the U.S.A. to summond the Greyhound Corp. and for an injunction, dismissed. Application of the Government for a stay pending appeal against Greyhound, *denied.*

APPENDIX C

United States District Court, Northern District of Illinois, Eastern Division

Civil No. 58 C 613

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY, ET AL., DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America, petitioner, appeals to the Supreme Court of the United States from the order entered in this action on June 30, 1970 dismissing its petition dated June 18, 1970.

This appeal is taken pursuant to 15 U.S.C. 29.

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Appendix D

In the Supreme Court of the District of Columbia

No. 37623. Equity

THE UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY AND OTHERS, DEFENDANTS

DECREE AND CONSENTS

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto daily authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation

in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and

described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are pur-

chased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse-radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapple.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Dates.
Raisins.

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca-Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinace chili.
Tomato catsup.

7. Coffee, tea chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, walnuts. But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.
Oats.
Hominy.
Hominy feed.
Horse feed.
Brewers' flakes.
Brewers' grit.
Brewers' meal.
Buckwheat.
Canned hominy.
Clipped oats.
Corn grits.
Ground meal.
Ground oats.
Ground corn.
Cracked corn.
Crushed white oats.
Feed barley.
Feed meal.
Feed wheat.
Rolled oats.
Standard middlings.
Standard spring brand.
Spaghetti.
Vermicelli.
Macaroni.
Corn flakes.
Wheat foods.

12. Grain

13. Miscellaneous articles, to wit:

Cigars.
China.
Furniture.
Bluing starch.
Fence posts and wire fences.
Alfalfa meal.
Babbitt.
Bar iron.
Binding and twine.
Brass Castings for heavy ordnance.
Brick.
Builders' hardware.
Bumping posts for railroads.
Cement, lime, plaster
Doors and windows.
Dried brewers' grains.
Lath.
Pitting and fruit handling machinery.
Roofing.
Sand and gravel.
Shingles.
Soda fountains or parts thereof.
Structural steel.
Tile.
Waste.

14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50% or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following to wit:

Asparagus.
Navy beans.
Lima beans.
Peas.
Beets.
Corn.
Okra.
Potatoes.
Tomatoes.
Celery.
Garlic.
Horse radish.
Pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapple.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Raisins.
Dates.

4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Olives.
Chili sauce.	Oyster cocktail sauce.
Cinnamon.	Pepper.
Cloves.	Pickles.
Mustard.	Spinace chilli.
Mustard seed.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following: to wit: Almonds, pecans, walnuts. But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however,

That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants any capital stock or other interests whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public coldstorage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by them

selves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered

by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and

associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard, shall as a part of said purchase, agree with such defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date

when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity

of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transactions consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation

defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stock yard market companies, stock yard terminal railroads, stock yard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become neces-

sary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

WALTER I. MCCOY,
Chief Justice.

FEBRUARY 27, 1920.

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